

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* R. E. SMITH, JR., Minor.

UNPUBLISHED  
March 20, 2018

No. 339062  
Oakland Circuit Court  
Family Division  
LC No. 14-824810-NA

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Before: MURRAY, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to the child pursuant to MCL 712A.19b(3)(c)(i) and (g).<sup>1</sup> We affirm.

Respondent argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence, and in finding that termination of her parental rights was in the child's best interests.

I. STANDARDS OF REVIEW

The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). This Court reviews for clear error a circuit court's decision that a statutory ground for termination has been proven by clear and convincing evidence. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. Once the petitioner has proven a statutory ground, the circuit court must order termination if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). A circuit court's decision regarding a child's best interests is also reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. A decision qualifies as clearly erroneous when, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes this Court as more than just maybe or probably wrong. *In re Trejo*, 462 Mich at 356.

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<sup>1</sup> The trial court also terminated the parental rights of the child's father, but he is not a party to this appeal.

## II. STATUTORY GROUNDS FOR TERMINATION

### A. MCL 712A.19b(3)(c)(i)

A trial court may order termination of parental rights under MCL 712A.19b(3)(c)(i) if the evidence clearly and convincingly establishes the following:

The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Approximately 27 months had elapsed between the trial court's entry of an initial dispositional order and the termination hearing. In October 2014, the trial court exercised jurisdiction over the child on the basis of respondent's no contest plea. Respondent did not dispute that an October 2014 drug screen had "tested positive for [c]ocaine and high levels of [o]xycodone," that in September 2014, she no longer had 30-day prescriptions that she had refilled 15 days earlier, that she lacked stable housing in mid-October 2014, that she had left the child unattended after passing out "at a homeless shelter" because she overdosed on prescription medication, and that she and the child's father shared domestic violence and substance abuse histories. In December 2014, the circuit court ordered respondent to participate in a psychological evaluation, attend domestic violence counseling, attend drug screens, complete parenting education classes, regularly attend supervised parenting times, stay in contact with the caseworker, and maintain appropriate housing and a legal income source.

Respondent's caseworker, Melissa Davis, testified that she found housing resources for respondent and referred her for weekly individual therapy, medication management with a psychiatrist, and substance abuse treatment. Although the agency lacked funding to pay for housing, Davis arranged for respondent to receive a free month of lodging at a hotel. Davis repeatedly gave respondent contact information for homeless shelters and told her how to apply for a housing voucher. Respondent failed to pursue stable housing because she preferred living in the woods. Davis agreed that respondent completed individual therapy, but said she attended only two medication reviews with her psychiatrist. Davis arranged transportation of respondent to the psychiatric appointments, but respondent often did not appear at the designated pickup site and the transportation services were suspended. Respondent failed to pursue Davis's substance abuse referrals. Respondent routinely met with Davis and a parenting peer only until August 2016.

Elizabeth Germaine, who also served as respondent's caseworker, testified that because respondent and the child's father were planning to care for the child together, Germaine worked with them concerning their capacity to live independently and maintain child safety. Germaine discussed substance abuse issues with respondent, but respondent denied abusing any substances and did not attend drug screens. According to Germaine, respondent and the child's father lived in hotel rooms "sporadically," for which respondent paid by earning income from cleaning. But

starting in approximately January 2016, they lived in a car and a trailer in the woods on another person's property. Germaine assisted respondent in completing applications for Section 8 housing, but Germaine cancelled respondent's services because of her failure to participate and make progress.

Jackie Barnes, the child's paternal aunt, testified that the child was still living with her at the time of the termination hearing, where he had lived for approximately two years. Barnes routinely supervised respondent's parenting times, which occurred once or twice a week. Parenting times were originally held at Barnes's house, but were moved after an incident in February 2016, when someone stole Adderall, Ritalin, and the contents of the children's piggy banks. Respondent admitted responsibility for the theft in April 2016. Respondent regularly attended parenting times and shared a bond with the child, but she once visited the child while under the influence of alcohol.

Helen Foster, who worked as respondent's case manager, testified that she developed a plan to address respondent's achievement of the treatment plan goals of employment, proper housing, mental health treatment, and substance abuse treatment. Respondent and the father were planning to care for the child together. After they lost their hotel housing, their housing situation remained unstable. They lived in a car near Barnes's house, an unspecified wooded area, the home of respondent's coworker, and a trailer park. Beginning in November 2016, respondent and the child's father had rented a room in a house from an elderly couple who had a "concerning criminal history." The lack of stable, appropriate housing plagued respondent throughout the period that Foster supervised the case.

Foster testified that she referred respondent for substance abuse treatment in March 2016, but respondent failed to pursue this referral or seek any substance abuse treatment. Respondent failed to consistently attend drug screens between January and October 2016, but supplied all scheduled drug screens after December 2016. At least three times respondent tested positive for high levels of amphetamines and marijuana, but not since October 2016. Respondent no longer required mental health services or took prescription medications.

Foster testified that respondent completed parenting classes, consistently attended weekly parenting times, interacted appropriately with the child, and shared a bond with the child. But respondent never maintained consistent employment adequate to care for the child. For part of the period she worked as a salon apprentice, but at the time of the hearing she only cleaned houses and was earning approximately \$100 a week. Since January 2016, respondent had been convicted of being a "disorderly person indecent obscene conduct" and was serving a term of probation.

Respondent claimed that she had completed all aspects of her treatment plan. She completed parenting classes, attended parenting times with the child, worked as a home care giver and house cleaner, avoided alcohol and cocaine, and was waiting to reenroll in mental health treatment. Respondent acknowledged that she and the child's father had lived in the woods, but disputed Davis's testimony that she failed to pursue a homeless referral voucher. Respondent denied that she and the father were planning to care for the child together. Respondent also denied ever being diagnosed with a mental illness, although she was currently taking medication for anxiety. According to respondent, she had completed the requirements of

her probation and was waiting for the probation officer to discharge her. Respondent admitted that she had previously abused amphetamines, and had tested positive for unprescribed amphetamines during the proceeding, but disputed the accuracy of a November 2016 drug screen that tested positive for THC.

The testimony of Barnes, Davis, Foster, Germaine, and respondent established that she had completed parenting classes, regularly attended parenting times, and interacted well with the child. All of the witnesses also agreed that the child shared a bond with respondent. The testimony of Davis, Foster, and respondent established that she had completed a course of individual therapy.

But the testimony of Barnes, Davis, Foster, Germaine, and respondent also agreed that the homelessness that had constituted a basis for the trial court's exercise of jurisdiction over the child still existed during the termination hearing approximately 27 months later. Although the caseworkers repeatedly referred respondent for different forms of housing assistance, she failed to take advantage of these services, and instead resided in a series of temporary residences unsuitable for the child, including a tent near Barnes's property with the child's father, who shared a history of domestic violence with respondent. Furthermore, the testimony of Barnes, Davis, Foster, Germaine, and respondent established her continued lack of stable employment, which was another factor in the child's placement in foster care, throughout the case and more than two years later. At the termination hearing, respondent reported having full-time employment that paid \$10 an hour, but she failed to substantiate this position to the caseworkers.

Moreover, the testimony of Davis, Foster, Germaine, and respondent established that respondent did not attend substance abuse treatment, despite it being a primary reason for the child's foster care placement. Respondent admitted that she had left the child unsupervised at a homeless shelter after losing consciousness from imbibing substances. The evidence agreed that the caseworkers repeatedly referred respondent for substance abuse treatment, which she ignored because she did not believe she needed it. Respondent argued that her participation in negative drug screens, especially beginning in December 2016, established that she no longer required substance abuse treatment. But her regular participation in drug screens occurred only as the termination hearing approached, and for the majority of the 27 months that the child lived in foster care, her participation in screening was irregular. Respondent failed to substantially comply with the court-ordered drug screenings and substance abuse treatment.

The testimony of the caseworkers also agreed that respondent failed to take advantage of multiple referrals for domestic violence therapy. At the time of the December 2014 adjudication, respondent admitted that a history of domestic violence existed between her and the child's father. Her capacity to recognize potential domestic violence situations remained in doubt at the time of the termination hearing in March 2017. Respondent testified that shortly before the termination hearing, she had moved to a house to help care for the people who lived there. Foster testified that at least one of the residents had a criminal history that made the house unsuitable for the child. Although respondent filed for divorce from the father, at the time of the hearing, she had moved in with a new boyfriend whom she proposed as a caregiver for the child. She failed to substantially progress regarding the order to complete treatment for domestic violence.

In addition, considering respondent's lack of progress during the 27 months that the child remained in care, no reasonable likelihood existed that she might improve her parenting skills within a reasonable time. A decision regarding a reasonable time for improvement "appropriately focuse[s] not only on how long it would take respondent to improve her parenting skills, but also on how long her . . . children could wait for this improvement." *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991); see also *In re LE*, 278 Mich App 1, 28; 747 NW2d 883 (2008). We conclude that the trial court did not clearly err by finding that clear and convincing evidence warranted termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i).

#### B. MCL 712A.19b(3)(g)

Under MCL 712A.19b(3)(g), a circuit court can terminate a respondent's parental rights if the court finds, by clear and convincing evidence, that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." Abundant evidence established respondent's failure to properly care for, protect, and supervise the child, and the unlikelihood that she might improve her parenting skills within a reasonable time. *In re JK*, 468 Mich at 213-214.

Clear and convincing evidence proved that respondent failed to provide proper care and custody. Respondent did not dispute that an October 2014 drug screen had "tested positive for [c]ocaine and high levels of [o]xycodone," that in September 2014, she no longer had 30-day prescriptions that she had refilled 15 days earlier, that she lacked stable housing in mid-October 2014, that she had left the child unattended after passing out "at a homeless shelter" because she overdosed on prescription medication, and that she and the father shared domestic violence and substance abuse histories. Clear and convincing evidence also established the unlikelihood that respondent would be able to rectify her parental shortcomings within a reasonable time in light of the child's age. *In re LE*, 278 Mich App at 28; *In re Dahms*, 187 Mich App at 648. As summarized in the discussion regarding the propriety of termination under MCL 712A.19b(3)(c)(i), clear and convincing evidence established that despite the circuit court's allowance of approximately 27 months for respondent to participate in domestic violence therapy, drug screens, substance abuse therapy, and to maintain appropriate housing with a suitable income, respondent demonstrated insufficient improvement in all of these areas. Meanwhile, the young child had languished in foster care for more than two years and required permanency and stability. Accordingly, the trial court did not clearly err in finding that clear and convincing evidence warranted termination of respondent's parental rights pursuant to MCL 712A.19b(3)(g).

### III. BEST INTERESTS

"Even if the trial court finds that the [petitioner] has established a ground for termination by clear and convincing evidence, it cannot terminate the parent's parental rights unless it also finds by a preponderance of the evidence that termination is in the best interests of the children. MCL 712A.19b(5)[.]" *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015). In *In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014), this Court summarized:

The trial court should weigh all the evidence available to determine the children's best interests. To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability and finality, and the advantages of a foster home over the parent's home. The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption. [Quotation marks and citations omitted.]

The trial court committed no clear error in finding that termination of respondent's parental rights served the child's best interests. The testimony agreed that a loving bond existed between respondent and the child. Respondent completed parenting classes and regularly attended parenting times. But she failed to rectify her longstanding substance abuse, homelessness, and lack of an income suitable to care for the child. She also made no progress toward addressing the domestic violence concerns that existed since the child arrived in foster care in 2014. Consequently, her overall parenting skills qualified as poor. The child had spent more than two years in foster care, and had strong needs for finality, permanency, and stability. Furthermore, the child lived in an appropriate foster home that met his needs and could provide him a permanent home. The evidence supports the trial court's finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Christopher M. Murray  
/s/ Mark J. Cavanagh  
/s/ Karen M. Fort Hood